

**[Program Name]**

**Program Agreement**

[ ] City,

**[Local non-profit or community action agency Partner],**

and

[ ] Bank

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[ ] [ ], 20XX

## ENERGY EFFICIENCY PROGRAM AGREEMENT

This Program Agreement (“Agreement”) is made this [ ] day of [ ], 2010 by and among [ ] Bank, having its principal place of business at 123 Main St., [City], [State] 19890 (“Bank”); [A Local non-profit or community action agency partner], having its principal place of business at 456 Main St., [City], [State] 19890 (“Non-Profit”); and City of [ ], having its principal place of business at 789 Main St., [City], [State] 19890 (individually a “Party,” collectively the “Parties”)(the Non-Profit and the City collectively are the (Organizers”).

### Recitals

- A.** The Organizers will be working with commercial and residential energy users in the [City] to prepare energy efficiency (“EE”) projects (“Projects”) that meet the requirements of the [State or USDOE] grant that has funded this Energy Efficiency Program (the “Program”).
- B.** The Organizers intend to market the Program, develop customized energy efficiency investment plans for energy users, arrange for EE audits and recommend accredited contractors, confirm eligibility of proposed Projects, assist with available rebates, assist with the loan application process, and verify quality of completed Projects.
- C.** The Bank is in the business of providing loans, subject to credit approval of individual customers and transactions, which loans can be used by customers to fund Projects.
- D.** Bank will provide loan financing, based on agreed-upon underwriting criteria, directly to individual eligible residential and commercial customers for EE measures (“Loans”) and wishes to expand its EE finance activity in volume.
- E.** Bank and the Organizers wish to establish terms, conditions, and procedures for their cooperation in marketing and originating Loans, with the support of grant funding and loan loss reserve protection.

### Agreements

In consideration of the foregoing recitals and the mutual covenants set forth below, the Parties agree as follows:

- 1. Loans.** Bank will provide and administer Loans to customers desiring to finance a Project (“Customers” or “Borrowers”). All estimated Loan terms and Bank duties regarding the Loans are defined in a separate agreement between the Bank and the City. This Energy Efficiency Loan Program Agreement is attached for reference as Annex A.
- 2. Program Management.** Each of the Parties to this Agreement will designate a point person to manage the Program. See Section 12(e) for contact information.

- (a) Point person for Non-Profit is [Name].

(b) Point person for the Bank is [Name].

(c) The Bank shall ensure that a contact at each of its branches in [the City] is familiar with the Program and conversant with the terms of this Agreement. Contact information for branch point personnel is listed in Annex B.

(d) Bank shall issue policy and operating guidelines supporting the Program and distribute to its branch offices. Organizers shall have an opportunity to review and comment.

**3. Training.** All Parties will train their personnel on the Program.

(a) Bank will create training materials covering its role in the Program. Bank personnel will use these materials to provide training on the Bank's procedures to both the Organizers and to the Bank's own branch personnel located throughout the City. Follow-up training will be available as needed.

(b) Non-Profit will develop training materials for the Bank to familiarize Bank personnel with Non-Profit's "one-stop-shop" procedure and Main Street storefront operations.

- The one-stop-shop service will coordinate:
  - Technical services to test, diagnose, and develop an individualized energy-savings plan for a particular building;
  - Assistance with finding appropriate financing options, based on projected savings identified in the plan;
  - Referrals for qualified and competent contractors who can perform the identified work; and
  - A quality assurance inspection that ensures, through post-work testing and inspection, that the work was done as required.

(c) Non-Profit will develop training materials and train their own personnel on staffing for the "one-stop-shop" procedure and on staffing the Main Street storefront. This training will include ensuring familiarity with all Loan materials and Bank's credit determination procedure.

(a) Each of the Parties will assist the others, as needed, in the development of training materials and ensure that all relevant staff are well-trained on the Program.

**4. Organizers' Roles in Loan Marketing.** Parties will develop collaboratively Loan marketing materials, including loan applications. Non-Profit shall develop and ensure effective distribution of marketing materials. Its roles and responsibilities include the following:

(a) Non-Profit agrees to notify its current and past membership of the availability of Loans under the Program and to use best efforts to "sell" them on the Program.

(b) Non-Profit agrees to notify homeowners in the City of the availability of Loans under the Program and to use best efforts to "sell" them on the Program.

- (c) Non-Profit will work to develop an advertising campaign to target newspapers, radio, etc.
- (d) Non-Profit will work to prepare marketing materials for distribution to potential Customers. Expenses for marketing materials will be borne by \_\_\_\_\_.
- (e) Non-Profit will maintain a storefront presence at 456 Main Street to serve as the physical presence for the “one-stop shop.”
- (f) Organizers will educate Customers on Bank financial services and Loan terms and conditions, using information approved by the Bank.
- (g) The Organizers shall obtain Bank’s prior and specific approval for all mention of the Bank in marketing materials, media ads, and/or other public outreach.
- (h) Records of its marketing efforts shall be kept by the Organizers and shared with the Bank.
- (i) Etc.

**5. Bank’s Role in Project and Loan Marketing.** Bank will identify existing Bank customers in the target market sectors throughout the City.

- (a) Bank will review its list of current customers to determine which may have potential for participation in the Program and facilitate an introduction between the Organizers and those potential Customers.
- (b) Bank will develop marketing literature to include in monthly statements and to display prominently at branches.
- (c) Bank agrees to announce the Program and its benefits in certain of the Bank’s media ads.
- (d) Bank agrees to display signage at certain of its branches announcing the Program and its benefits.
- (e) Records of its marketing efforts shall be kept by the Bank and shared with the Organizers.
- (f) Costs of Bank marketing materials and distribution will be borne by Bank.
- (g) Etc.

**6. Target Loan Volumes.** For target loan volumes, see Section 2.05 of the Energy Efficiency Loan Program Agreement (attached as to this Agreement as Annex A).

**7. Project Eligibility.** All prospective residential projects must be evaluated by the Bank and the Non-Profit because of the need to ensure eligibility both in terms of financial and energy efficiency objectives.

(a) If the lead on a prospective project first originates with the Bank, the Bank shall coordinate with Non-Profit so it can evaluate whether the project meets energy efficiency design criteria. If the lead on a prospective project first originates with Non-Profit, it shall coordinate with the Bank so it can begin the Loan application process, as set forth in Section 9 below.

(b) A prospective project shall receive approval as an “Eligible Project” only if it meets the following criteria:

(i) The prospective project meets energy efficiency design criteria and receives a Project Eligibility Letter; and

(ii) The project receives Loan credit approval, as set forth in Section 9 below.

(c) Non-Profit shall evaluate the prospective project to determine whether it meets energy efficiency design criteria and other Grantor requirements, (as set forth in Annex C of the Energy Efficiency Loan Program Agreement) and if it does, issue a Project Eligibility Letter (see Annex E of the Energy Efficiency Loan Program Agreement), and provide the Bank with a copy of the Project Eligibility Letter.

**9. Loan Credit Approval.** Once Non-Profit issues a Project Eligibility Letter, the borrower must satisfy the Bank’s credit underwriting criteria. Bank and Organizers will work together in the Loan origination and approval process.

(a) Customer will make formal application to the Bank for a Loan. The Non-Profit may provide the Loan application through its “one-stop-shop process.” The Non-Profit will assist Customer to complete the Loan Application, a form for which is Annex C. Loan Application will include description of the Project and cost estimates.

(b) Organizers will assist Bank to gather further information as needed from Customer and about the Project to support Bank process of evaluating a Loan Application. Bank will consult with the Organizers to seek ways to make the Project creditworthy for Bank lending.

(c) Bank shall evaluate the Loan Application. Loans will be evaluated at the Bank’s headquarters to ensure consistency.

(d) The Bank will provide its credit approval or rejection of the Loan application within \_\_\_ days of receiving a complete Loan Application for a residential Loan.

(e) The approved Loan amount shall include a cost overrun contingency of 10% of the cost estimate.

(g) Once a Loan application has been approved, the Bank will provide Loan

documents to the borrower for review and execution. Borrower and Bank shall execute a Loan agreement, with disbursement of funds conditioned only upon the Bank receiving a Residential Project Quality Assurance Certificate (Annex F of the Energy Efficiency Loan Program Agreement) at the completion of project, signed by both the Non-Profit and by Borrower, indicating borrower's acceptance of the completed Eligible Project and authorizing Bank to disburse Loan proceeds to the contractor.

(h) After the Bank and borrower have executed the Loan agreement, the project can proceed with construction funding provided by the building owner or the contractor.

#### **10. Loan Closing and Disbursement.**

(a) Upon completion of construction, the contractor will apply to Non-Profit for assurance that the project has met all energy efficiency design criteria and other Grantor requirements (as set forth in Annex C of the Energy Efficiency Loan Program Agreement). If Non-Profit determines that additional work is needed to meet the energy efficiency design criteria, Non-Profit will notify contractor in writing with a corrective order. When all energy efficiency design criteria have been met, Non-Profit will issue and deliver a copy of the Residential Project Quality Assurance Certificate for that project to the Bank (Annex F of the Energy Efficiency Loan Program Agreement). The Residential Project Quality Assurance Certificate will verify the final costs of the project and Loan amount, within previously approved Loan amount.

(b) Borrower will execute an Acceptance Certificate and Disbursement Authorization, authorizing disbursement of Loan proceeds to contractor (see Annex F of the Energy Efficiency Loan Program Agreement).

(c) When the Bank receives the Residential Project Quality Assurance Certificate, it shall disburse Loan funds to contractor within \_\_\_\_\_ days of receipt of the Residential Project Quality Assurance Certificate, including the Acceptance Certificate and Disbursement Authorization from the Borrower. Final Loan amount will be adjusted based on final costs.

**11. Fees.** Bank shall charge each Customer a fee of 1% of the principal amount of each Loan for services and work performed pursuant to this Agreement. The Bank will aggregate these fees and pay them to Non-Profit on a quarterly basis. The Borrower may finance these fees as an addition to the principal amount of the Loan.

**12. Reporting.** The Parties will maintain a Loan Prospect & Origination Report, updated monthly, which tracks each Loan prospect and its status within the process of Loan origination and level of advancement in the process. An initial form of this Report is provided as Annex D.

#### **13. Miscellaneous**

(a) Definitions. Any undefined, capitalized terms refer to defined terms in the Energy Efficiency Loan Program Agreement (attached to this Agreement as Annex A).

(b) Termination of Agreement. This Agreement shall terminate upon the payment in full of all Loans and when all funds, per Section 3.04 of the Energy Efficiency Loan Program Agreement, have been moved from the Reserve Accounts to the Reflow Accounts.

(i) In addition to the termination provisions provided in subsection (b) above, this Agreement shall terminate upon written agreement of all of the Parties regardless of cause.

(ii) If the Parties are in breach of any provision of this Agreement, the Parties will follow the procedures under Section 13(c). The initiation of arbitral proceedings in accordance with the herein prescribed procedure for Arbitration shall not be deemed a termination of this Agreement.

(iii) Should Bank be adjudged bankrupt, or be liquidated, or become insolvent, or should Bank make an assignment for the benefit of its creditors, or should a Receiver be appointed on account of the insolvency, the City may, without prejudice to any other right or remedy it may have, terminate this Agreement forthwith. Bank shall immediately inform the City of the occurrence of any of the above events.

(c) Settlement of Disputes and Arbitration.

(i) Any dispute or controversy arising out of, in connection with, or relating to this Agreement that the Parties are unable to resolve after making a good faith effort to do so on their own, shall be submitted to mediation conducted by a mutually acceptable mediator. If the Parties are unable to agree on a mediator, or otherwise to resolve the dispute or controversy through mediation, then the Parties shall submit the dispute or controversy to arbitration conducted by the American Arbitration Association, in [City], [State], pursuant to its then existing rules and regulations. Any decision so rendered in arbitration shall be binding and final on all Parties.

(ii) During the dispute or arbitration, the performance of the obligations of the Parties shall not be stopped or put on hold, except for such work as may be the subject matter of the dispute or arbitration or as is directly affected thereby.

(d) Observance Other Laws. All Parties shall comply with all laws, ordinances, rules, and regulations bearing upon the performance of its obligations under the terms of this Agreement. Any party shall submit any and all information required by another party to demonstrate compliance with such laws, ordinances, and codes within two weeks of that party's request for such information.

(e) Agency. Nothing in this Agreement shall constitute a partnership among the Parties nor constitute one party the agent of the other party and vice versa. Except as set out in this Agreement, no party shall have express or implied authority to bind or represent any other party for any purpose whatsoever unless expressly agreed in writing by the party concerned.

(f) Notices. All notices, instructions, and other communications shall be in writing and shall be delivered by registered mail or by confirmed email or fax to the Parties at the following addresses:

For Bank:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

For Non-Profit:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

For City:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

All such notices and communications shall be deemed to have been delivered on the date of delivery, if delivered by certified mail, or on the date confirmation was sent if delivered by confirmed email or confirmed fax.

(g) Successors and Assigns. This Agreement shall bind and inure to the benefit of the Parties and the respective successors and assigns and shall not be assignable without the prior written consent of all Parties. Any purported assignment in violation of this Section shall be void.

(g) Entire Agreement; Waiver; and Modification. This Agreement constitutes the entire agreement between and among the Parties with respect to the subject matter hereof and supersedes any and all prior agreements and undertakings, written or oral, with respect to the subject matter. Any waiver, amendment, or modification of the provisions shall not be effective unless in writing and signed by all the Parties. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which given, and shall not be construed to affect any other or future waiver or consent.



(h) Headings. Headings in this Agreement are for convenience or reference only and shall not be used in the interpretation or construction of this Agreement.

(i) Severability. If any one or more of the provisions of this Agreement shall be found to be invalid, illegal, or unenforceable in any respect or to any extent, such finding shall not affect the validity, legality, or enforceability of such provisions in any other jurisdiction, and the validity, legality, and enforce-ability of the remaining provisions of this Agreement shall not in any way be affected, impaired, or restricted.

(j) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be a single agreement.

(k) No Waiver; Remedies. No failure on the part of any party to exercise, and no delay in exercising, and no course of dealing with respect to, any right, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or remedy under this Agreement preclude any other or further exercise thereof or the exercise of any other right, power, or remedy. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

(l) Governing Laws. This agreement shall be governed by and construed in accordance with the laws of the State of [State]. In any legal action arising from this agreement, the substantially prevailing party shall be entitled to reasonable attorney's fees, including costs allocated for in-house counsel, other costs, and necessary disbursements incurred in connection with the action or proceeding as determined by a court.

**IN WITNESS WHEREOF**, and intending to be legally bound, the Parties hereto subscribe their names to this Agreement on the date below.

**Non-Profit**

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

**The City of [City]**

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

**Bank of [Bank]**

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

## **List of Annexes**

### A. Energy Efficiency Loan Program Agreement

#### **List of Annexes to Energy Efficiency Loan Program Agreement**

- A. Sample form for Quarterly Report
- B. Terms, Conditions, and Underwriting Criteria - Loans
- C. Project Eligibility Design Criteria – Loans
- D. Project Eligibility Determination Procedure
- E. Sample form Residential Project Eligibility Letter
- F. Sample form Residential Project Quality Assurance Certificate
- G. Sample form Banner Bank Default Demand Letter

#### **List of Schedules to Energy Efficiency Loan Program Agreement**

- 1. [ ] Bank's Loan Underwriting Criteria
  - 2. Quarterly Reports
- B. Contact Information for Bank Branch Point Personnel
  - C. Loan Application Form – Residential
  - D. Loan Prospect and Origination Report
  - E. Acceptance Certificate and Disbursement Authorization

**Annex A**  
**– Energy Efficiency Loan Program Agreement –**

**Annex B**  
**– Contact Information for Bank Branch Point Personnel –**

**Annex C**  
**– Loan Application Form –**  
**Residential Loans**

[Bank to supply]

**Annex D**  
**– Loan Prospect and Origination Report –**

**Annex E**  
**– Acceptance Certificate and Disbursement Authorization –**